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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,634	01/16/2004	Daniel Richard Monroe	42P11621C	1217

7590 03/20/2008
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EXAMINER

TORRES, JUAN A

ART UNIT	PAPER NUMBER
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2611

MAIL DATE	DELIVERY MODE
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03/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/759,634	Applicant(s) MONROE ET AL.	
	Examiner Juan A. Torres	Art Unit 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-56 and 58-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-55 and 62 is/are allowed.
- 6) ☒ Claim(s) 56 and 58-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/22/2008</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 01/22/2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

The modifications to the drawings were received on 01/22/2008. These modifications are accepted by the Examiner.

In view of the amendment filed on 01/22/2008, the Examiner withdraws Drawing objections of the previous Office action.

Specification

The modifications to the specification were received on 01/22/2008. These modifications are accepted by the Examiner.

In view of the amendment filed on 01/22/2008, the Examiner withdraws Specification objections of the previous Office action.

Claim Objections

The modifications to the claims were received on 01/22/2008. These modifications are accepted by the Examiner.

In view of the amendment filed on 01/22/2008, the Examiner withdraws claim objections to claims 26, 32-49 and 53 of the previous Office action.

Claim Rejections - 35 USC § 101

The modifications to the claims were received on 01/22/2008. These modifications are accepted by the Examiner.

In view of the amendment filed on 01/22/2008, the Examiner withdraws claim rejections under 35 USC § 101 to claims 56 and 58-60 of the previous Office action.

Double Patenting

The modifications to the claims were received on 01/22/2008. These modifications are accepted by the Examiner.

In view of the amendment filed on 01/22/2008, the Examiner withdraws statutory type double patenting rejections to claims 23-29 of the previous Office action.

In view of the Terminal Disclaimer filed on 01/22/2008, the Examiner withdraws nonstatutory type double patenting rejections to claims 30-60 of the previous Office action.

Response to Arguments

Regarding claims 56-60:

Applicant's arguments filed 01/22/2008 have been fully considered but they are not persuasive.

The Applicant contends:

"AAPA and STD-101 do not disclose or render obvious "a short message service message, the short message service message including modem management information, wherein the modem management message includes program code that can execute on a wireless modem". For at least one or more of these reasons, claim 56 and its dependent claims are believed to be allowable over AAPA and STD-101"

The Examiner disagrees, and asserts that, as indicated in the previous Office action, AAPA discloses a short message service message, the short message service message (SMS) including information (page 2 lines 14-22). AAPA doesn't disclose that the information is modem management information. STD-101 discloses in the annex f managing information using AT command for wireless modems that includes program code, the AT commands, that can execute on a wireless modem (pages 1-10 discloses all the AT command available. The AT commands are program code that when executes in the modem produce an action in the modem, provide status of the modem or change internal parameters in the mode).

For these reasons and the reason stated in the previous Office Action, the rejections of claims 56-60 are maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 56, and 58-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art (AAPA) view of PCCA standard STD-101 Annex f "Data Transmission Systems and Equipment - Serial Asynchronous Automatic Dialing and Control for Character Mode DCE on Wireless Data Services -Annex F:

Miscellaneous Commands”, PCCA, October 1994, pages 1-10) (using EP0849682 and US 5764899 and for inherency).

Regarding claim 56, AAPA discloses a data structure embodied in a computer readable medium comprising a short message service message, the short message service message (SMS) including information (see figure 1 and page 1 line 19 to page 3 line 14. The wireless modem of figure 1 inherently includes a memory like the landline modems, see i.e. EP0849682 figure 1 included in the last 1449-PTO, see also figure 7 of the present application, see also figure 2 of previously mentioned Eggleston (US 5764899 A), the memory is an inherent part of a GSM wireless modem block 108 of figure 1 of the present application). AAPA doesn't disclose that the information is modem management information where the modem management message includes program code that can execute on a wireless modem. STD-101 discloses in the annex f managing information where the modem management message includes program code that can execute on a wireless modem using AT command for wireless modems (pages 1-10). AAPA and STD-101 are analogous art because they are from the same field of endeavor of wireless modem. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to incorporate in the SMS messages disclosed by AAPA the management information disclosed by STD-101. The suggestion/motivation for doing so would have been to control the wireless modem remotely using a wireless connection.

Regarding claim 58, AAPA and STD-101 disclose claim 56, AAPA also discloses a data storage medium (page 2 lines 14-22, figure 1 block 104).

Regarding claim 59, AAPA and STD-101 disclose claim 56, STD-101 also discloses wireless modem configuration parameters (pages 1-10). AAPA and STD-101 are analogous art because they are from the same field of endeavor of wireless modem. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to incorporate in the SMS messages disclosed by AAPA the management information disclosed by STD-101. The suggestion/motivation for doing so would have been to control the wireless modem remotely using a wireless connection.

Regarding claim 60, AAPA and STD-101 disclose claim 56, STD-101 also discloses a command for wireless modem to perform a function stored internally to the wireless modem (pages 1-10). AAPA and STD-101 are analogous art because they are from the same field of endeavor of wireless modem. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to incorporate in the SMS messages disclosed by AAPA the management information disclosed by STD-101. The suggestion/motivation for doing so would have been to control the wireless modem remotely using a wireless connection.

Regarding claim 61, AAPA and STD-101 disclose claim 56, AAPA also discloses a GSM modem that inherently will includes a memory (see figure 1 and page 1 line 19 to page 3 line 14). The wireless modem of figure 1 inherently includes a memory like the landline modems, see i.e. EP0849682 figure 1 included in the last 1449-PTO, see also figure 7 of the present application, see also figure 2 of previously mentioned Eggleston (US 5764899 A), the memory is an inherent part of a GSM wireless modem block 108 of figure 1 of the present application).

Allowable Subject Matter

Claims 23-55 and 62 are allowed.

The following is an examiner's statement of reasons for allowance: Claims 23-55 and 62 are allowed because a comprehensive search of prior art failed to teach, either alone or in combination, receiving a short message service message at a wireless modem; examining the short message service message for modem management information; processing the short message service message at the wireless modem when the short message service message includes the modem management information; and passing the short message service message through the wireless modem when the short message service message does not include the modem management information, as the applicant has claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juan A. Torres whose telephone number is 571-272-3119. The examiner can normally be reached on 8-6 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ghayour can be reached on 571-272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Juan Alberto Torres
01-31-2008

/Mohammad H Ghayour/
Supervisory Patent Examiner, Art Unit 2611